Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	))	CC Docket No. 96-45
	)	
Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	))))	CC Docket No. 00-256

Comments of TCA, Inc. – Telcom Consulting Associates

Introduction

Telcom Consulting Associates (TCA) submits these Initial Comments in response to the Commission's May 23, 2001, Further Notice of Proposed Rulemaking (FNPRM)[1] seeking comment regarding the Rural Task Force's (RTF) proposal to freeze per-line support in rural carrier study areas in which a competitive eligible telecommunications carrier (CETC) is providing service.

TCA is a management-consulting firm providing financial and regulatory services for over fifty small, rural local exchange carriers (LECs) throughout the United States. A large majority of TCA's clients are rural carriers and are directly impacted by any changes to the federal universal service support mechanisms.

TCA supports the Commission's decision to seek further comment on this significant issue. As the Commission notes, the extensive record (including comments submitted to

[1] *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 96-45 and 00-256, FCC No. 01-157, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, Adopted May 10, 2001, Released May 23, 2001 (Order and FNPRM).

the Federal-State Joint Board (Joint Board) on Universal Service on November 3rd and 30th, 2000) regarding the complete RTF Recommendation contains very little evidence (if any) that High Cost Fund (HCF) support to rural carriers would significantly increase due to competitive entry. Neither the RTF nor the Joint Board submitted any proof that such an increase *would* occur; both simply stated that an increase *could* occur. Further, neither body, nor any commentator on the record, attempted to substantiate the significance of a potential increase in the size of the HCF. TCA acknowledges that an increase in high cost support to a rural ILEC could occur upon the entry of a CETC. However, TCA stands with the Commission and looks for proof that any potential increase would be excessive and in violation of the statutory mandates of universal service support.

I. The Rural Task Force correctly identifies "sufficiency" as a criterion for the support mechanism for rural carriers.

One specific objective guiding the RTF in considering the issues put before it, is that any support mechanism, including the current mechanism, should be "consistent with the universal service support and pro-competitive provisions of the 1996 [Telecommunications] Act."[2] Using the principles established by Congress in Section 254(b) of the 1996 Act, the RTF sets out "sufficiency" as one of eight criteria under which to consider an appropriate support mechanism.[3] A sufficient universal service support fund is a well-established concept in the telecommunications policy debate. This issue -- The fund should be sufficient to provide for comparable rates, but not be overly large as to encourage inefficient investment – has been well debated both within the instant proceeding and numerous proceedings in this docket. The Joint Board, noting its obligation to provide sufficient support to both non-rural and rural carriers in its decision[4], most certainly deliberated upon the appropriate size of the HCF to meet the sufficiency criteria. Indeed, the Commission, stating its intent to monitor the impact of

[2] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, Adopted September 22, 2000, Released September 29, 2000 (RTF Recommendation), p.5.
[3] RTF Recommendation, p.16. The remaining criteria are: affordability, competition, flexibility, protection and advancement, portability, predictability, and practicality.

CETCs on the HCF, notes its "obligation in section 254 to maintain a specific, predictable, and *sufficient* universal service fund."[5]

TCA supports sufficiency as a laudable and achievable goal of universal service support, however, as the Commission notes, "[d]etermining whether support is 'sufficient' for purposes of the Act is not a precise exercise…"[6] The Commission "must use its expertise and informed judgment"[7] in making a determination that would "strike a fair and reasonable balance among the goals and principles of the Act…"[8] TCA notes, that there is a current lack of evidence on the record that *any* increase to the HCF fund, resulting from the entrance of a CETC or other factors, would render the fund overly excessive and not meet the goal of sufficiency. Indeed, while many commentators in the proceeding have noted, both positively and negatively, the size of the HCF, none have stated or quantified at what level the HCF will cease being sufficient and become a financial burden to universal service contributors.

The RTF, in proposing the freezing of support simply upon service of one line by a CETC, is proposing a solution to a problem that may never occur. As the Commission noted within the Order and FNPRM, "[t]he likelihood of this harm occurring in the immediate future is speculative…"[9] The Commission continues that the RTF proposal may actually freeze support at excessive levels, thereby causing the HCF to increase.[10] TCA commends the Commission for seeking substantiation of harm before attempting to correct any supposed harm.

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[4] *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 00J-4, Recommended Decision, Adopted and Released December 22, 2000, p.6 (Recommended Decision).
[5] Order and FNPRM, ¶211, emphasis added.
[6] Order and FNPRM, ¶27.
[7] *Ibid.*
[8] *Ibid.*
[9] Order and FNPRM, ¶123.
[10] *Ibid.*

II. The Commission correctly notes that there is a current lack of evidence supporting an excessive High Cost Fund during the next five years.

The RTF, in proposing the specific recommendation at issue, stated that per line HCF support available for each service area would change every year.[11] Citing factors including changes in embedded costs and customer base, the RTF concludes that per line HCF support for both an ILEC and a CLEC must be frozen upon entry of a CETC into the service area to control what it terms "spiraling" growth in the HCF.

TCA does not argue that the entry of a CETC, and accompanying provision of service, within a rural service area will potentially increase the size of the HCF. As both the RTF and the Joint Board have noted, per line support will be based on embedded costs during the next five years. As those costs may not be reduced or eliminated once a CETC wins a customer, the level of HCF support flowing into a specific service area has the possibility to increase. TCA does argue, however, that *any* potential increase in the size of the HCF does not automatically cause the HCF to become excessive or to cease meeting the goal of sufficiency. The Commission recognizes this when it uses terms such as "substantial," "many" and "meaningful percentage" to describe the amount of lines a CETC would need to win from an ILEC to result in excessive HCF growth.[12]

Within the RTF Recommendation, the RTF offers no substantiation that the entry of a CETC into a rural service area will cause a significant increase in the size of the HCF. The RTF further explains, within its supporting White Papers, the potential for the HCF to increase. Stating, "[c]urrent support is based on the ILEC's costs and investments averaged over total lines served by the ILEC,"[13] the RTF correctly states that these costs remain after the loss of a customer to a competitor. These resulting competitive losses "*may* result in an increase in per line support for both the ILEC and the competitive ETC,

[11] RTF Recommendation, p. 37.
[12] Order and FNPRM, ¶¶ 126, 207, 208.
[13] *Alternative Mechanisms for Sizing A Universal Service Fund for Rural Telephone Companies*, Rural Task Force, White Paper 3, August 2000, http://www.wutc.wa.gov/rtf/rtfpub.nsf, p. 12.

increasing the overall size of the fund."[14] However, the RTF does not state, nor even guess, as to how *much* of an increase in universal service support may be expected or how much of an increase would cause the HCF to become excessive.

The Joint Board, in its Recommended Decision to the Commission, endorses the RTF proposal to freeze HCF support,[15] although it offers no proof that a significant increase in the HCF size will occur during the duration of the RTF Recommendation. The numerous commenters in previous comment cycles also have not presented any estimates regarding the size of the increase to the HCF. The very presence of this FNPRM states that the Commission is quite reluctant to adopt a proposal without a strong record from which to make an informed policy judgment.

III. Available data does not justify freezing support.

A review of the latest information available from the Universal Service Administrative Company (USAC) demonstrates that the RTF's frozen support proposal is not justified. As the Commission is aware, federal support has been available to competitive carriers since the inception of the 1996 Act, subject to ETC qualification. During the period from 1996 until current, one would expect support received by CETCs to at least justify the RTF's concerns about "spiraling" growth of the fund. However, a review of USAC's information demonstrates otherwise.

According to USAC's latest available information (fund projections for the 3rd and 4th quarters of 2001[16]), CETCs are expected to receive $805,324 in monthly federal support. According to USAC, the entire federal fund, consisting of high cost loop support, interstate access support, long-term support, and local switching support, is expected to pay $201,598,301 per month to eligible carriers. Thus, CETCs are expected to require less than one-half of one percent (0.5%) of the entire fund to provide universal service.

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[14] *Ibid* (emphasis added).
[15] Recommended Decision, p.9.
[16] *Federal Universal Service Programs Fund Size Projections and Contribution Base for the Third Quarter 2001*, and *Federal Universal Service Programs Fund Size Projections and Contribution Base for the Fourth Quarter 2001* http://www.fcc.gov/ccb/universal_service/quarter.html#2001.

Clearly, this fact does not meet the burden the Commission has set – such measures are necessary to prevent excessive fund growth – for freezing support.

Examination of the reports regarding local telephone service competition, recently issued by the Commission, reveals that the concerns of the RTF and the Joint Board are groundless. Data[17] found in the reports focuses on ILEC/CLEC competition and may be used to analyze the impact of CETC entry upon the HCF fund.

By years end 1999, CLECs reported a total of 8.3 million end-user lines. This figure had risen to 16.3 million end-user lines by December 2000, a market share increase of 93% in one year.[18] With lines acquired from ILECs removed[19], the numbers drop to 2.8 million lines owned by CLECs in December 1999 and 5.7 million CLEC owned lines by December 2000[20]. These reduced numbers still represent an increase of approximately 50% in CLEC owned lines.

If the theory behind the frozen support proposal is correct – that the HCF will automatically and significantly increase due to entry of CETCs – there should be a corresponding increase in the size of the HCF. In 1999, USAC reported to the Commission that it would pay an estimated $1.72 billion in HCF support: $864.2 million of high cost loop support, $383 million in local switching support and $473 million in long term support.[21] Annual payouts from the HCF for 2000 totaled $1.74 billion -- $872 million in high-cost loop support, $391 million in local switching support and $479

[17] Three local competition reports have been issued by the Commission, spanning the period of January 1999 through December 2000. However, reporting by ILECs and CLECs was not mandatory until May 15, 2000. See *Local Telephone Competition at the New Millennium,* Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, August 2000, http://www.fcc.gov/ccb/stats; *Local Telephone Competition: Status as of June 30, 2000*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, December 2000, http://www.fcc.gov/ccb/stats; *Local Telephone Competition: Status as of December 31, 2000*, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, May 2001, http://www.fcc.gov/ccb/stats (December 2000 Local Competition Report).
[18] December 2000 Local Competition Report, Table 1.
[19] A CLEC would not receive HCF support for lines resold from the ILEC.
[20] December 2000 Local Competition Report, Table 3.
[21] *Federal Universal Service Programs Fund Size Projections and Contribution Base for the Fourth Quarter 1999*, July 30, 1999, pp. 5,7,8, http://www.fcc.gov/ccb/universal_service/quarter.html#1999.

million in long-term support.[22] Over the same time period, as CLEC owned lines increased approximately 50%, the HCF only increased approximately 10%. Clearly, the entry of CETCs into rural service areas will not have a dramatic or significant impact on the size of the HCF during the duration of the RTF Recommendation.

The Commission expresses concern that a competitive threshold, such as proposed by TCA in its comments regarding the RTF Recommendation, would not account for new subscriber lines. As discussed above, a likely result of a CETC capturing lines from an incumbent could increase incumbent support. However, this does not hold true in the case of a CETC receiving support for newly served lines or customers, as is widely found among wireless CETCs. When support is provided for a new line, the incumbent does not lose a line, and thus the incumbent's support would not be affected under the Commission's current portability rules. TCA suggests any "spiraling" fund growth caused by wireless carriers who receive support for new or additional lines is a function of providing support to carriers without any real method of determining if those lines need support. For instance, basing support eligibility on a wireless customer's billing address does little to ensure support is necessary for that customer, or is being used for its intended purposes.

IV. The Commission should, as it states, continue to monitor the impact of competitive entry on the High Cost Fund.

The Commission adopted the RTF Recommendation on an interim basis to extend to July 1, 2006.[23] As it states, the Commission intends, during this period, "to closely monitor the impact of competitive entry in rural carrier study areas…"[24] The Commission should monitor the situation, gather facts[25] and, *if, and when*, the universal service goal of sufficiency is threatened, act to once again achieve the balance sought by Congress.

[22] *State-by-State Telephone revenues and Universal Service Data*, Robert Cavazos, James Eisner, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, April 2001, Table 6.
[23] Order and FNPRM, ¶8.
[24] *Ibid*, ¶131.
[25] Within the Order and FNPRM, the Commission requires line count data to be filed on a quarterly basis upon the entry of a CETC into a rural service area. Order and FNPRM, ¶133.

Until that point, however, a poor policy choice, as is encompassed within the RTF proposal, will only serve to unbalance and threaten the very sufficiency of the HCF sought by the Congress and needed by the country.

Respectfully submitted,
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